

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
September 30, 2003 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Robert M. Kirby, Board member, presided. No other Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc=Disciplinary Case
Lic=Licensing Application
RF=Recovery Fund Claim
Trades=Tradesmen Application


C=Complainant/Claimant
A=Applicant
R=Respondent/Regulant
W=Witness
Atty = Attorney

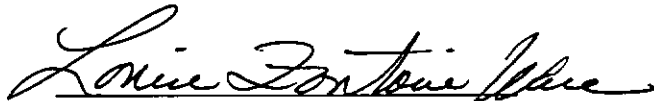
Participants

- | | |
|--|--|
| 1. Andrew W. Hairston
t/a Handy Andy's Home Improvement
File Number 2002-02882 (Disc) | Andrew Hairston - R
Margaret Hairston - W
Edna Wilson - C
Melvin Wilson - W |
| 2. David C. White
t/a Atlantic Drafting & Designs
File Number 2003-01344 (Disc)
No decision was made. | Bradford Jacob – C |
| 3. David's Home Improvement Inc
File Number 2003-02291 (Disc) | None |
| 4. William E. Lawson Jr. and Jonathan Hunt
t/a D to Z Construction
File Number 2004-00209 (Lic)
No IFF held. | |
| 5. Fredrick Ramsay
File Number 2004-00210 (Lic) | Ramsay – A |
| 6. Tyler Kirkner | Kirkner – A |

The meeting adjourned at 3:30 p.m.

BOARD FOR CONTRACTORS


Mark D. Kinser, Chairman


Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR CONTRACTORS

RE: ANDREW W. HAIRSTON, T/A HANDY ANDY'S HOME IMPROVEMENT
LICENSE NUMBER 2705-016508

FILE NUMBER: 2002-02882

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 30, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Andrew W. Hairston, t/a Handy Andy's Home Improvements on August 28, 2003. The following individuals participated at the conference: Andrew W. Hairston, Respondent; Margaret Hairston, Wife of Respondent; Edna Wilson, Complainant; Melvin Wilson, Husband of Complainant; Jennifer Kazzie, Staff Member; and Robert M. Kirby, Presiding Board Member.

t/a Tin Man Specialties
File Number 2003-03530 (Lic)

7. Ronald Hollinger
t/a Hollinger Homes
File Number 2003-03084 (Disc)

Hollinger – R
Markham - C
Rosser – C's Atty.

8. Ronald Hollinger
t/a Hollinger Homes
File Number 2003-03085 (Disc)

Hollinger – R

9. Scott L. Wells
t/a SW Contracting
File Number 2003-01040 (Disc)

Paul Leeks - C

10. Clint Horton and
Solis Fence Company of VA Inc.
File Number 2003-01582 (RF)

None

Summation of Facts

1. Edna Wilson (Wilson) entered into a contract on or about July 24, 2001, with Andrew W. Hairston, t/a Handy Andy's Home Improvements (Hairston) to build an addition, a 10' x 12' room and a 16' x 18' deck, at her residence located at 687 Dogwood Drive, Martinsville, Virginia. The contract amount is \$22,345.50, less \$1,000.00 allotted for wood flooring, which was provided by the Wilson's.
2. The contract used by Hairston in the transaction failed to contain the minimum provisions required by the Board's 1999 Regulation 18 VAC 50-22-260(B)(8), subsections (a) when the work is to begin and the estimated completion date, (b) schedule of progress payments, (d) statement explaining that delays caused by events beyond control do not constitute abandonment and are not included in calculating time frames for payment or performance, (e) statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights, and (h) the contractor's name, address, license number, expiration date, class of license/certificate, and classification or specialty services.
3. On or about July 29, 2001, Hairston began work on the project. On or about November 19, 2001, Hairston failed to return to complete the work.
4. Between July 24, 2001 and November 2, 2001, Wilson paid Hairston a total of \$21,399.00 by checks towards the \$22,345.50 contract price.
5. On or about October 16, 2001, Wilson paid Lowe's \$568.85 for carpet and installation. On or about November 17, 2001, Wilson paid \$489.46 for deck materials on her Lowe's account.
6. On or about December 2001, Wilson sent a letter to Hairston. On or about December 20, 2001, Steven Traubert (Traubert), attorney representing Wilson, sent a letter to Robert Williams (Williams), attorney representing Hairston, regarding incomplete work and the quality of work performed. Traubert requested Wilson be contacted to resolve the incomplete work.
6. In letters dated December 6, 2001, and December 28, 2001, Williams requested that Wilson and Hairston meet to try to amicably resolve the matter. On or about January 2002, Wilson and Hairston met. Wilson and Hairston agreed to finish the work, including:
 - The steps will be placed on the deck;
 - The beams; 2-2X8 and 3-4X4 will be placed on the deck;
 - The plastic will be laid in the basement;
 - The deck rails will be tightened;
 - He will cover the electric box with a door; and
 - Do the other clean-up things you pointed out in your pictures on the inside.

Hairston also agreed to add concrete around the house and clean-up once the weather permitted.

7. On or about February 4, 2002, Laura Quirk (Quirk), attorney representing Wilson, sent a letter to Williams regarding incomplete work. Quirk also advised Williams that Hairston was "not to trespass on my clients' property."

8. On or about March 8, 2002, Quirk sent Williams a revised contract specifying the work to be completed to fulfill Hairston's obligations under the July 24, 2001, contract.

9. In a letter dated April 19, 2002, Williams stated that Hairston decided that this new contract was not in his best interest and would not sign the contract presented by Quirk on behalf of Wilson.

10. In a letter dated June 13, 2002, Cecil Stone (Stone), Code Enforcement Officer with Henry County, noted the following code violations from the 1995 CABO One and Two Family Dwelling Code:

- label the branch circuits in the electrical panel as required by CABO 3904.11,
- provide access to the new side room attic space as per CABO 807.1,
- backfill the excavated foundation space as per CABO 406.3.4,
- complete finish grade slope around foundation to comply with CABO 401.3 (minimum 6" slope in 10' distance),
- install gutters, downspouts and downspout discharge to comply with CABO 801.3,
- step flash shingles of side room addition along vertical side wall connection to comply with CABO 903.6 (now flashed with one continuous flashing),
- cut the vinyl siding lengths to comply with manufacturer's installation instructions and expansion tolerances set out in ASTM 3679.4.8,
- properly secure fallen down insulation in crawlspace and turn paper on insulation up to floor to comply with CABO 319.1 and label instructions,
- rear deck has 2 x 8 floor joist spanning 16' on 16" center spacing; maximum allowable span is 12'10" per CABO table 301.4,
- bottom step rise is 11" on the rear deck is a violation of CABO 314.2,
- the rear deck handrail is 3 1/2" and should be a maximum of 2 5/8" per CABO 315.2,
- the step and deck guardrails do not meet the 200 pound side force requirement of CABO table 301.4,
- non-metallic sheathed cable in the crawlspace needs to be supported at the maximum spacing of 4.5' required by CABO table 4302.1,
- flexible plastic used as a dryer exhaust duct needs to be a rigid metal with approved flexible metallic duct connections per CABO 1801.1,
- dryer exhaust length and bends exceed the maximum total of 25', subtract 5' from the 25' for each bend per CABO 1801.3,
- receptacle by the kitchen door in the new side room shows improper installation with a circuit tester, the 11' wall space from the closet to the bed area needs a receptacle no more than 6' from any point along the wall per CABO 4401.2,

- the insulation in the ceiling of the bedroom needs to be completed as required by CABO Appendix E,
- the header in the bedroom ceiling, where the existing wall was removed, does not meet the load and span specifications of CABO table 602.6 and is not an approved installation.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(8) (Effective May 1, 1999)

Hairston's failure to make use of a legible written contract that contains all provisions specified in the regulation is in violation of the Board's 1999 Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend a monetary penalty of \$350.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Hairston's failure to complete work contracted for is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed, along with revocation of Hairston's license.

Count 3: 18 VAC 50-22-260(B)(16) (Effective September 1, 2001)

Hairston's failure to return money received for work not performed or performed only in part is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed, along with revocation of Hairston's license.

Count 4: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Hairston's failure to perform the work in accordance with 1995 CABO One and Two Family Dwelling Code requirements is misconduct in the practice of contracting, and is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors

Date: September 30, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705-016508 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: DAVID'S HOME IMPROVEMENT, INC.
LICENSE NUMBER 2705-056983**

FILE NUMBER: 2003-02291

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 30, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to David's Home Improvement, Inc., Attn: David Chergosky on August 28, 2003. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Robert M. Kirby, Presiding Board Member. No one from David's Home Improvement, Inc. appeared at the IFF.

Summation of Facts

1. On or about February 24, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Dr. John R. Pauswinski (Pauswinski) regarding a contract entered into with David's Home Improvement, Inc. (David's).

2. On or about July 23, 2002, Pauswinski entered into a contract with David's, in the amount of \$1,413.00, for the construction of a platform deck for a hot tub, landscaping timbers, a railing on the existing deck steps, and the repair of the existing deck at 7517 Todd Place, Manassas, Virginia. Neither Pauswinski nor David's has a copy of the subject contract. The only paperwork David's provided Pauswinski was a sheet of letterhead paper showing that David's would install landscape timbers.
3. David's failed to deliver to Pauswinski a fully executed copy of the contract prior to commencement of work.
4. On or about July 22, 2002, David's advised Pauswinski that a building permit was not needed for the deck construction.
5. Pauswinski obtained information from Prince William County that a building permit was required and 100 psi was required for a hot tub.
6. In the end of July 2002, David's commenced the work by digging footings and placing posts.
7. After September 2002, David's failed to return to complete the work, including the deck framing, repair of the existing deck, and replacement of landscape timbers.
8. On or about March 21, 2003, Susie Keirut, Secretary with Prince William County Code Enforcement, advised Investigator Carolyn D. Wright, the Board's agent, that Section 109.1 of the Virginia Uniform Statewide Building Code ("USBC") required a building permit for the work performed.
9. On or about March 21, 2003 and May 30, 2003, Investigator Carolyn D. Wright, the Board's agent, made verbal requests to David Chergosky (Chergosky), President of David's, requesting a copy of the subject contract. On May 30, 2003, Chergosky promised to provide a copy of the contract. As of June 2, 2003, Chergosky failed to produce the requested document to the Board's agent.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(10) (Effective September 1, 2001)

Failure by David's to deliver to the consumer before commencement of work a fully executed copy of the contract is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(10). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

Count 2: 18 VAC 50-22-260(B)(6) (Effective September 1, 2001)

Failure by David's to obtain a building permit is misconduct in the practice of contracting and is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Failure by David's to complete the work contracted for, including the deck framing, repair of the existing deck; and replacement of landscape timbers, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of \$2,500.00 be imposed, along with revocation of David's license.

Count 4: 18 VAC 50-22-260(B)(12) (Effective September 1, 2001)

Failure by Chergosky to produce a copy of the contract requested by Investigator Carolyn D. Wright, the Board's agent, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(12). Therefore, I recommend a monetary penalty of \$1,000.00 be imposed.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors
Date: September 30, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705-056983 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: FREDRICK H. RAMSAY
APPLICATION**

FILE NUMBER: 2004-00210

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 30, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Fredrick H. Ramsay on August 27, 2003. The following individuals participated at the conference: Fredrick H. Ramsay, Applicant; Jennifer Kazzie, Staff Member; and Robert M. Kirby, Presiding Board Member.

Summation of Facts

1. Fredrick H. Ramsay (Ramsay) applied for a Tradesman license on or about April 7, 2003, and disclosed criminal convictions.
2. On or about July 2, 2003, the Board's licensing staff provided the Regulatory Programs Division Application Review Informal Fact Finding Conference Referral Memorandum, which states the reasons the license was not issued.
3. During the IFF, Ramsay stated that he is sincerely sorry for his past indiscretions and is seeking to improve his life by obtaining a Tradesman's license.

Prior Criminal Convictions

§ 54.1-204 of the Code of Virginia. Prior convictions not to abridge rights.

B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;

Ramsay was convicted of Larceny, a Misdemeanor; and Obtaining Money Under False Pretense, a Felony.

2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;

The purpose of licensure is to protect the health, safety, and welfare of the public. The crimes for which Ramsay was convicted occurred over ten years ago, and did not involve physical harm to another person. Therefore, I feel he would not endanger the health, safety, and welfare of the public.

3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;

I do not believe that licensure as a master electrician will present significant opportunity to engage in further criminal activity.

4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

Again, I see no correlation between the crimes committed and the capacity for fitness of the applicant to perform his responsibilities as a master electrician.

5. The extent and nature of the person's past criminal activity;

Ramsay was convicted of Larceny, a Misdemeanor; and Obtaining Money Under False Pretense, a Felony.

6. The age of the person at the time of the commission of the crime;

Ramsay was approximately 34 years of age at the time of the crime for Larceny.

7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;

The last offense for Obtaining Money Under False Pretense occurred on or about November 18, 1988.

8. The conduct and work activity of the person prior to and following the criminal activity; and

During the IFF, Ramsay stated that he has been in the electrical trade since 1970. Ramsay is seeking employment as an electrician and perspective employers have told him that he needs to obtain a master electrician's license.

9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

Per Progress Report from the U.S. Department of Justice, while incarcerated, Ramsay maintained a clear conduct record, maintained work assignments, and was polite and courteous with the staff. Shortly after arriving at the institution Ramsay was assigned to the Electrical Shop. He consistently received outstanding work reports from his detail supervisors, he is a knowledgeable journeymen, saving the institution vast amounts of money due to his trouble shooting expertise, and was granted a gate pass on June 16, 1992.

At the time of the sentencing, Ramsay was ordered to pay a special assessment and a fine. He has been participating in the Financial Responsibility Program and paid the special assessment in full. He is making quarterly payments of \$25.00 on the fine.

Conclusion and Recommendation

Based upon the record, including the information obtained from the Central Criminal Records Exchange, and in consideration of the criteria outlined in § 54.1-204.B, I recommend Ramsay's application be approved.

By: _____

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors

Date: September 30, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**IN RE: TYLER F. KIRKNER
T/A TIN MAN SPECIALTIES
APPLICATION**

FILE NUMBER: 2003-03530

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 30, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Tyler F. Kirkner, t/a Tin Man Specialties on August 27, 2003. The following individuals participated at the conference: Tyler F. Kirkner, Applicant; Jennifer Kazzie, Staff Member; and Robert M. Kirby, Presiding Board Member.

Summation of Facts

1. Kirkner applied for a Class A Contractor's license on or about May 1, 2003, and disclosed the filing of a bankruptcy.
2. On or about June 23, 2003, the Board's licensing staff provided the Regulatory Programs Division Application Review Informal Fact Finding Conference Referral Memorandum, which states the reasons the license was not issued.
3. In that Tyler Kirkner, Responsible Management, Designated Employee and Qualified Individual of Tin Man Specialties, filed for and discharged debts through a Chapter 7 bankruptcy pursuant to Section 348(d) of the Bankruptcy Code (Title 11, United States Code). This bankruptcy was a result of the failure of Pulaski Tinning Co., Class A license number 2705-023600, which expired on 4/30/02, of which Mr. Kirkner was the Designated Employee and Qualified Individual.
4. During the IFF, Kirkner stated that he had attempted to keep a family business afloat for approximately ten years. He ultimately failed in part due to temporary illness. Kirkner presented letters from both the County Engineer of Pulaski County, and the Town Manager of the Town of Pulaski stating their close relationship with Kirkner. Both individuals gave their highest possible recommendation that this Board approve Kirkner's application. Kirkner further stated that he considers outstanding debts to be debts of honor, and he believes that approval of his application will put him in a better financial position to settle these debts.

Conclusion and Recommendation

Based upon the record and the testimony presented at the IFF, I recommend Kirkner's application be approved.

By: _____

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors

Date: September 30, 2003

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: RONALD G. HOLLINGER
T/A HOLLINGER HOMES
LICENSE NUMBER 2705-066204**

FILE NUMBER: 2003-03084

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 30, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Hollinger Homes, c/o Ronald Hollinger on July 11, 2003, and by re-schedule letter on July 24, 2003. The following individuals participated at the conference: Ronald Hollinger, Respondent; Trisha Markham, on behalf of Costen Floors, Inc., Complainant; Derrick E. Rosser, Esquire, Attorney for Costen Floors, Inc.; Jennifer Kazzie, Staff Member; and Robert M. Kirby, Presiding Board Member.

Summation of Facts

1. On or about March 1, 2002, Ronald G. Hollinger, t/a Hollinger Homes, contracted with Costen Floors, Inc. to install flooring in a new construction at 13307 Glebe Lane, Charles City, Virginia.

2. On or about May 1, 2002, Costen submitted a statement to Hollinger, for labor and materials supplied for the Vernon Hicks job. The statement indicated Hollinger had a \$20,618.89 balance due.
3. On or about August 30, 2002, in the Circuit Court of the County of Henrico, Costen was awarded a \$17,766.63 judgment, plus interest, attorney's fees, and costs, against Hollinger.
4. On May 12, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Costen regarding a judgment against Hollinger.
5. As of July 7, 2003, Hollinger failed to satisfy the judgment.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Failure by Hollinger to satisfy a judgment entered in the Circuit Court for the County of Henrico, Virginia, in favor of Costen Floors, Inc., is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors
Date: September 30, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705-066204 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**RE: RONALD G. HOLLINGER
T/A HOLLINGER HOMES
LICENSE NUMBER 2705-066204**

FILE NUMBER: 2003-03085

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 30, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Hollinger Homes, c/o Ronald Hollinger on July 11, 2003, and by re-schedule letter on July 24, 2003. The following individuals participated at the conference: Ronald G. Hollinger, Respondent; Jennifer Kazzie, Staff Member; and Robert M. Kirby, Presiding Board Member. In addition, Derrick E. Rosser, Esquire, Attorney who represented Nathan Barbuto, one of the plaintiffs in the judgments against Ronald Hollinger, attended. Further, Trisha Markham observed.

Summation of Facts

1. On April 3, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received an email from bnmadatu@aol.com regarding an outstanding judgment against Ronald G. Hollinger (Hollinger), t/a Hollinger Homes.
2. On or about May 9, 2002, in the General District Court of Chesterfield County, Morris Industries Inc. was awarded a \$5,178.58 judgment against Ron Hollinger, t/a Hollinger Homes.
3. On or about June 7, 2002, in the General District Court of the City of Richmond, Builders Supply Co of Petersburg Inc. was awarded a \$14,910.15 judgment against Ronald G. Hollinger, t/a Hollinger Homes.

4. On or about August 8, 2002, in the General District Court of the City of Richmond, Nathan Barbuto Jr. and Nathan's Roof Repairs was awarded a \$6,125.00 judgment against Ron Hollinger.
5. On or about August 8, 2002, in the General District Court of the City of Richmond, Nathan Barbuto Jr. and Nathan's Roof Repairs was awarded a \$3,500.00 judgment against Ron Hollinger.
6. On or about September 26, 2002, in the General District Court of Chesterfield County, West End Fabricators Inc. was awarded a \$822.31 judgment against Hollinger Homes Inc.
7. On or about November 14, 2002, in the General District Court of Chesterfield County, Adams Insulation Company Inc. was awarded a \$2,476.80 judgment against Hollinger Homes Inc.
8. On or about December 23, 2002, in the General District Court of Henrico County, Kane Plumbing Company was awarded a \$5,412.88 judgment against Ron Hollinger.
9. On or about January 13, 2003, in the General District Court of the City of Richmond, Building Science Inc. was awarded a \$1,800.00 judgment against Ron Hollinger, t/a Hollinger Homes.
10. On or about February 20, 2003, in the Circuit Court of the City of Richmond, Knoetta Martin was awarded a judgment against Ronald Hollinger. (NOTE: Record does not indicate amount of judgment.)
11. On or about February 14, 2003, in the Circuit Court of the City of Richmond, Madrika Martin was awarded a judgment against Ronald Hollinger. (NOTE: Record does not indicate amount of judgment.)
12. As of July 7, 2003, Hollinger failed to satisfy the judgments outlined in items 2 through 11.
13. Ron Hollinger of Hollinger Homes responded to Investigator Kevin Hoeft, the Board's agent, on June 12, 2003, and July 7, 2003. The letterhead used by Hollinger indicated the business name "Hollinger Homes Inc."
14. On November 14, 2001, Ronald G. Hollinger, t/a Hollinger Homes, submitted an application for a Class A Contractor's license. In question #9, Hollinger indicated the type of business as a sole proprietorship.
15. Ron Hollinger of Hollinger Homes responded to Investigator Kevin Hoeft, the Board's agent, on June 12, 2003, and July 7, 2003. The letterhead used by Hollinger indicated the business name "Hollinger Homes Inc."

16. On July 11, 2003, a review of the licensing records of the Board for Contractors revealed Ronald G. Hollinger, t/a Hollinger Homes, was issued Class A Contractor's license number 2705066204 on September 6, 2002, as a sole proprietor.

17. On July 11, 2003, a review of the State Corporation Commission records revealed Hollinger Homes Inc. became certified on March 27, 2002. The records further revealed Ronald Hollinger as the President.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Failure by Hollinger to satisfy a judgment entered in the General District Court for the County of Chesterfield, Virginia, in favor of Morris Industries, Inc., in the amount of \$5,178.58, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 2: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Failure by Hollinger to satisfy a judgment entered in the General District Court for the City of Richmond, Virginia, in favor of Builders Supply Co. of Petersburg, Inc., in the amount of \$14,910.15, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 3: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Failure by Hollinger to satisfy a judgment entered in the General District Court for the City of Richmond, Virginia, in favor of Nathan Barbuto, Jr. and Nathan's Roof Repairs in the amount of \$6,125.00, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 4: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Failure by Hollinger to satisfy a judgment entered in the General District Court for the City of Richmond, Virginia, in favor of Nathan Barbuto, Jr. and Nathan's Roof Repairs, in the amount of \$3,500.00, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 5: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Failure by Hollinger to satisfy a judgment entered in the General District Court for the County of Chesterfield, Virginia, in favor of West End Fabricators, Inc., in the amount of \$822.31, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 6: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Failure by Hollinger to satisfy a judgment entered in the General District Court for the County of Chesterfield, Virginia, in favor of Adams Insulation Company, Inc., in the amount of \$2,476.80, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 7: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Failure by Hollinger to satisfy a judgment entered in the General District Court for the County of Henrico, Virginia, in favor of Kane Plumbing Company, in the amount of \$5,412.88, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 8: 18 VAC 50-22-260(B)(28) (Effective January 1, 2003)

Failure by Hollinger to satisfy a judgment entered in the General District Court for the City of Richmond, Virginia, in favor of Building Science, Inc., in the amount of \$1,800.00, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 9: 18 VAC 50-22-260(B)(28) (Effective January 1, 2003)

Failure by Hollinger to satisfy a judgment entered in the Circuit Court for the City of Richmond, Virginia, in favor of Knoetta Martin, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 10: 18 VAC 50-22-260(B)(28) (Effective January 1, 2003)

Failure by Hollinger to satisfy a judgment entered in the Circuit Court for the City of Richmond, Virginia, in favor of Madrika Martin, is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 11: 18 VAC 50-22-230(A) (Effective January 1, 2003)

Failure by Hollinger to operate in the name his license was issued is in violation of the Board's 2003 Regulation 18 VAC 50-22-230(A). Therefore I recommend a monetary penalty of \$350.00 be imposed.

Count 12: 18 VAC 50-22-260(B)(2) (Effective September 1, 2001)

Failure by Hollinger to submit accurate or complete information to the Board in obtaining, renewing, reinstating, or maintaining a license is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(2). Therefore, I recommend a monetary penalty of \$500.00 be imposed.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors
Date: September 30, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705-066204 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

BOARD FOR CONTRACTORS

**RE: SCOTT L. WELLS
T/A SW CONTRACTING
LICENSE NUMBER 2705-067146**

FILE NUMBER: 2003-01040

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 30, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Scott L. Wells, t/a SW Contracting on August 27, 2003. The following individuals participated at the conference: Paul O. Leeks, Complainant; Jennifer Kazzie, Staff Member; and Robert M. Kirby, Presiding Board Member. Neither Wells, nor anyone on his behalf, appeared at the IFF.

Summation of Facts

1. On October 3, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Paul O. Leeks (Leeks) regarding a contract entered into with Scott L. Wells (Wells) t/a SW Contracting.
2. On July 2, 2002, Leeks entered into a contract with Wells, in the amount of \$4,500.00, to construct 250 linear foot of 1 x 6 gothic fence around Leeks' lot at 60 Ripley Road, Stafford, Virginia.
3. On July 2, 2002, Leeks paid Wells \$2,250.00 as deposit.
4. The contract specified performance within 60 days, ending on August 31, 2002. As of September 30, 2003, Wells failed to commence the work contracted for.
5. On December 2, 2002, in the General District Court of Stafford County, Leeks was awarded a \$2,350.00 judgment against Wells. Wells failed to satisfy the judgment.
6. On January 24, 2003, Investigator Morgan T. Moore, the Board's agent, made a written request, via First Class Proof of Mailing, to Wells at the address of records of 13508 Pamela Court, Woodbridge, Virginia 22193, requesting Wells contact the Board's agent concerning the court awarded judgment within 5 days of receiving the letter. On January 31, 2003, the letter was returned to the Board's agent and was marked "moved, left no address."
7. On July 1, 2003, a review of the licensing records of the Board for Contractors revealed the address of record for Wells was 13508 Pamela Court, Woodbridge, Virginia 22193.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(15) (Effective September 1, 2001)

Failure by Wells to complete work contracted for and comply with the terms of the contract is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(15). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 2: 18 VAC 50-22-260(B)(28) (Effective September 1, 2001)

Failure by Wells to satisfy a judgment entered in the General District Court for the County of Stafford is in violation of the Board's 2001 Regulation 18 VAC 50-22-260(B)(28). Therefore, I recommend a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 3: 18 VAC 50-22-230(B) (Effective September 1, 2001)

Failure by Wells to notify the Board within 30 days of a change or address is in violation of the Board's 2001 Regulation 18 VAC 50-22-230(B). Therefore, I recommend a monetary penalty of \$350.00 be imposed.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors
Date: September 30, 2003

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705-067146 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**RE: IN THE MATTER OF THE VIRGINIA CONTRACTOR TRANSACTION RECOVERY
ACT CLAIM OF CLINT HORTON (CLAIMANT) AND SOLIS FENCE COMPANY
T/A SOLIS FENCE COMPANY (REGULANT)**

LICENSE NUMBER 2701 022714

FILE NUMBER: 2003-01582

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on September 30, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Clint Horton, c/o Jeffrey F. Mangeno, Esquire and Solis Fence Company on August 26, 2003. The following individuals participated at the conference:

Jennifer Kazzie, Staff Member; and Robert M. Kirby, Presiding Board Member. Neither Solis Fence Company (Regulant), nor anyone on its behalf, appeared at the IFF. Further, neither Horton (Claimant), nor anyone on his behalf, appeared at the IFF.

Background

On **November 27, 2001**, in Prince William County General District Court, Clint Horton obtained a **Judgment** against Solis Fence Company of Virginia, Inc., **in the amount of \$8,000.00, plus interest and \$59.00 costs**. The registered agent was Pamela Cosner (Cosner).

The **claim** in the amount of **\$8,000.00** was received by the Department of Professional and Occupational Regulation on **November 22, 2002**.

Summation of Facts

1. **Code of Virginia - Section 54.1-1120(A)** requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "fraud" as the basis for the suit. The blocks designated "Contract" and "Other" have been marked. No witnesses were present for either the Regulant or the Claimant to provide testimony on the nature of the alleged fraud. The attorney for the Regulant did provide a letter indicating that the Regulant fulfilled the obligations of his contract on July 26, 1999. In September, 1999, the Regulant hired another contractor to perform sealing of the fence constructed under the contract at the request of and at no cost to the Claimant.

2. **Code of Virginia - Section 54.1-1120(A)** also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimant contracted with Solis Fence Co., Inc. The contract indicates VA Contractor Class A No. 022714.

The Board issued Class A License Number 2701022714 to Solis Fence Company t/a Solis Fence Company, on October 20, 1982. The license was terminated on April 10, 2001. The licensing record reflects the firm type is a corporation. The claimant entered into a written contract with Solis Fence Co., Inc., on June 21, 1999 for the installation of a fence at the claimant's residence.

Cosner is listed as the Designated Employee, President and Treasurer of Solis Fence Company, License Number 2701022714.

3. **Code of Virginia - Section 54.1-1120(A)(1)** provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served for the August 5, 2001 Warrant in Debt filed against Solis Fence Company of Virginia, Inc.

4. **Code of Virginia - Section 54.1-1120(A)(2)** states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive any pleadings or documents prior to the claim being filed.

5. **Code of Virginia - Section 54.1-1120(A)(3)** requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on November 27, 2001. The claim was received on November 22, 2002.

6. **Code of Virginia - Section 54.1-1120(A)(4)** states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimant entered into a written contract with Solis Fence Co., Inc., for the installation of a fence at the claimant's residence.

7. **Code of Virginia - Section 54.1-1120(A)(5)** prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

8. **Code of Virginia - Section 54.1-1120(A)(6)** states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were not conducted as the regulant could not be found. On the Proof of Service the line designated as "Other" has been checked. A handwritten note has been included on the Proof of Service form "Solice Fence was bought by Nations Fence, Inc."

9. **Code of Virginia - Section 54.1-1120(A)(7)** states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites "fraud" as the basis for the suit. The blocks designated "Contract" and "Other" have been marked.

10. **Code of Virginia - Section 54.1-1120(B)** requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

11. **Code of Virginia - Section 54.1-1123(C)** excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

Conclusion and Recommendation

Based upon the record, although a judgment in the amount of \$8,000.00 was obtained by the Claimant, there is no clear and convincing evidence that the actions of the Regulant constitute improper or dishonest conduct. Additionally, there is no apparent correlation between the original contract amount of \$5,000.00 and the judgment amount of \$8,000.00. As such, there appears to be no basis for the claim under the Virginia Contractor Transaction Recovery Act and, I, therefore, recommend denial of the claim.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors
Date: September 30, 2003